

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

THOMAS WILLIAM CARR
TX-1334387-R

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DOCKETED COMPLAINT NO. 11-175
& 11-396

AGREED FINAL ORDER

On this the 13 day of JAN, 2012, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the certification of Thomas William Carr (Respondent).

In order to conclude this matter Thomas William Carr neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein, but agrees that the Board may enter the findings and conclusions to resolve this matter and further agrees to the disciplinary action set out in this Agreed Settlement Order. The Board makes the following findings of fact and conclusions of law and enters this Order in accordance with TEX. OCC. CODE § 1103.458:

FINDINGS OF FACT

1. Respondent, Thomas William Carr, is a state certified residential real estate appraiser who currently holds and held certification number TX-1334387-R during all times material to the above-noted complaint cases.
2. Respondent appraised 2906 Riviera Road, Austin, Texas 78733 ("the Riviera property") on or about April 2nd, 2010.
3. Respondent appraised 4503 Tortuga Cove, Austin, Texas 78731 ("the Tortuga property") on or about July 4th, 2009.
4. On or about December 23rd, 2010, Brian Pape, filed a complaint with the Board based on allegations that the Respondent had produced an appraisal report for the Riviera property that contained various deficiencies.
5. As a result of the Riviera property appraisal, the Board requested six additional appraisal files. The Board did not have concerns with any of the additional appraisals except the appraisal for the Tortuga property. On or about July 13th, 2011, Mark Mrnak, filed a staff-initiated complaint with the Board based on allegations that the Respondent had produced an appraisal report for the Tortuga property that contained violations of the Uniform Standards of Professional Appraisal Practice.

6. On or about January 5th, 2011 and July 21st, 2011, the Board, in accordance with the mandate of the Administrative Procedure Act (the APA), TEX. GOV'T CODE ANN. CHPT. 2001, and TEX. OCC. CODE CHPT. 1103, notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in each complaint. Respondent's response to each complaint was received.
7. Respondent committed the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the Riviera property:
 - a) Respondent failed to comply with the record-keeping provisions of the USPAP Ethics Rule;
 - b) Respondent failed to identify and report the improvement(s) description adequately;
 - c) Respondent failed to consider and report the property's zoning ordinance / classification correctly;
 - d) Respondent did not provide a summary of his basis and rationale for his determination of the property's highest and best use;
 - e) Respondent failed to identify and analyze the effect on use and value of existing land use regulations, economic supply and demand, physical adaptability of the real estate and market area trends;
 - f) Respondent failed to use an appropriate method or technique to develop an opinion of site value and did not provide support for his determination;
 - g) Respondent failed to collect, verify, analyze and reconcile the cost new of improvements, accrued depreciations, and comparable sales data adequately;
 - h) Respondent failed to employ recognized methods and techniques in the cost approach and sales comparison approach; and,
 - i) Respondent's report contains substantial errors of commission or omission as detailed above which resulted in a misleading appraisal report for the property.
8. Respondent committed the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the Tortuga property:
 - a) Respondent failed to comply with the record-keeping provisions of the USPAP Ethics Rule;
 - b) Respondent failed to identify and report the site and improvement(s) description adequately;

- c) Respondent failed to consider and report the property's zoning ordinance / classification correctly;
 - d) Respondent did not provide a summary of his basis and rationale for his determination of the property's highest and best use;
 - e) Respondent failed to identify and analyze the effect on use and value of existing land use regulations, economic supply and demand, physical adaptability of the real estate and market area trends;
 - f) Respondent failed to use an appropriate method or technique to develop an opinion of site value and did not provide support for his determination;
 - j) Respondent failed to collect, verify, analyze and reconcile the cost new of improvements, accrued depreciations, and comparable sales data adequately;
 - k) Respondent failed to employ recognized methods and techniques in the cost approach and sales comparison approach; and,
 - l) Respondent's report contains substantial errors of commission or omission as detailed above which resulted in a misleading appraisal report for the property.
9. Respondent made material misrepresentations and omitted material facts in his appraisal report for both of the properties as detailed above.

CONCLUSIONS OF LAW

1. The Texas Appraiser Licensing and Certification Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103 et. seq.
2. Respondent violated the following provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE § 155.1(a) and §153.20(a)(6): USPAP Ethics Rule (record keeping provisions); USPAP Standards: 1-2(e)(i) & 2-2(b)(iii); 1-2(3)(iv) & 2-2(b)(vii); 1-3(a) & 2-2(b)(viii); 1-3(b) & 2-2(b)(ix); 1-4(b)(i) & 2-2(b)(viii); 1-4(b)(ii) & 2-2(b)(viii); 1-4(b)(iii) & 2-2(b)(viii); 1-1(a) & 1-4(b); 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a); 1-1(a); 1-1(b); 1-1(c) and 2-1(a).
3. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(12) by making material misrepresentations and omitting material facts.

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that the Respondent shall:

a. Have his certification suspended with that suspension being fully probated for a period of eighteen months (18), under the following conditions:

- i. During the probated, eighteen month suspension period Respondent shall submit, within 7 days after the end of each quarter, to the Board an appraisal experience log on a form prescribed by the Board. The log shall be submitted every three months and shall detail all real estate appraisal activities he has conducted during the previous three month period. This experience log shall be signed by Respondent and contain a notarized affidavit attesting the log is true, complete and fully accurate. Upon request from the Board, Respondent shall provide copies of his appraisal reports and work files for any appraisal assignments he performs during the course of this period of probation within the twenty days of notice of any such request. The Board shall not have any person review or monitor such logs if that person competes or participates directly or indirectly in a commercial capacity in the Austin area real estate market;
- ii. Respondent shall not sponsor any appraiser trainees during the entire suspension period;
- iii. Within 6 months of the effective date of this order, Respondent shall complete 10 hours of in-person mentorship conducted by a certified USPAP instructor approved by the Board. Upon completion of the requisite mentorship hours, and, within 6 months of the effective date of this order, Respondent shall submit on a form provided by the Board, a copy of which is attached to this Agreed Settlement Order, a signed, notarized affidavit attested by the certified USPAP instructor confirming completion of the mentorship hours;
- iv. Respondent shall fully and timely comply with all of the provisions of this Agreed Settlement Order;

b. Attend and complete a minimum, 15 classroom-hour course in Residential Case Studies or the Sales Comparison Approach;

c. Respondent shall pay an administrative penalty of \$1,000.00.

d. Comply with all future provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

ALL CLASSES required by this Agreed Final Order must be classes approved by the Board and must be completed within **TWELVE MONTHS** of the date of this Order and documentation of attendance and successful completion of the educational

requirements of this Order shall be delivered to the Board on or before the end of the twelve-month period indicated. The Board may not unreasonably refuse to approve courses. The Board shall respond to a request for approval in a timely manner, in no event more than 7 business days from the date of the request. If the Board fails to timely respond, the courses shall be deemed to be approved. None of the classes or seminars required by this Order may be taken through correspondence courses. Unless otherwise noted above, all classes must be in-class, have an exam, and Respondent must have a passing grade on the exam given in each class. None of these required classes will count toward Respondent's continuing education requirements for licensure or certification. Respondent is solely responsible for locating and scheduling classes to timely satisfy the terms of this agreement.

Respondent may request modification of the remedial education required by this Agreed Settlement Order by submitting to the Board a written request explaining the basis for the requested modification. Requests for modification are only valid when made and acted upon by the Board within the one year time period for completion of the remedial education. Any such request can only be acted upon by the Board at a regularly conducted Board meeting and any request for modification, must therefore be received by the Board at least 30 days prior to the scheduled Board meeting date.

Failure to comply with any of the terms of this Agreed Final Order within the time allotted shall result in **IMMEDIATE SUSPENSION** of the Respondent's license or certification pursuant to notice to the Respondent from the Board indicating that the Respondent has not fulfilled the requirements of this Agreed Final Order.

ANY SUCH SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS. Respondent shall be notified of any such suspension or lifting of probation by certified mail, return receipt requested, to the last known address as provided to the Board. If Respondent's license or certification is suspended on such a basis, the suspension shall remain in effect for the remainder of the eighteen month suspension period noted above.

Respondent, by signing this Agreed Settlement Order, waives the Respondent's right to a formal hearing and any right to seek judicial review of this Agreed Settlement Order. Information about this Agreed Settlement Order is subject to public information requests and notice of this Agreed Settlement Order will be published on the Board's web site.

THE DATE OF THIS AGREED SETTLEMENT ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Settlement Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 15th day of December, 2011.


Thomas William Carr
THOMAS WILLIAM CARR

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 15th day of December, 2011, by THOMAS WILLIAM CARR, to certify which, witness my hand and official seal.


Sheila Strutz
Notary Public Signature

Sheila Strutz
Notary Public's Printed Name



Signed by the Commissioner this 13 day of Jan, ~~2011~~ 2012 

Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 13 day of Jan, ~~2011~~ 2012 

Luis De La Garza, Chairperson
Texas Appraiser Licensing and Certification Board

APPROVED AS TO FORM:

Jennifer S. Riggs
Jennifer S. Riggs, ATTORNEY FOR
RESPONDENT

Troy Beaulieu
Troy Beaulieu, TALCB STAFF
ATTORNEY

THOMAS WILLIAM CARR

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 15th day of December, 2011, by THOMAS WILLIAM CARR, to certify which, witness my hand and official seal.

Sheila Strutz
Notary Public Signature

Sheila Strutz
Notary Public's Printed Name



Signed by the Commissioner this 13 day of Jan, 2011. 2012 2012

Douglas Oldmixon
Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 13 day of JAN, 2011. 2012 2012

Luis De La Garza
Luis De La Garza, Chairperson
Texas Appraiser Licensing and Certification Board

APPROVED AS TO FORM:

Jennifer S. Riggs
Jennifer S. Riggs, ATTORNEY FOR
RESPONDENT

Troy Beaulieu
Troy Beaulieu, TALCB STAFF
ATTORNEY